Supreme Court, U.S.
FILED
OCT 17 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-318 (4)

In the

Supreme Court of the United States

October Term, 1985

MAHFOUZ EL SHAHAWY, M.D.,

vs.

LARRY P. ELLIOTT, M.D.,

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals For
The Eleventh Circuit

APPENDIX
TO BRIEF FOR THE RESPONDENT IN OPPOSITION

G. Hunter Gibbons
(Counsel of Record for
Respondent Elliott)
and Claire L. Hamner
Dickinson, O'Riorden, Gibbons,
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Attorneys for Respondent Elliott

Dated: October 16, 1985

BEST AVAILABLE COPY

23 pp

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DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 84-3618
Non-Argument Calendar

D.C. Docket No. 81-545

MAHFOUZ EL SHAHAWY, M.D.,

Plaintiff-Appellant,

v.

LARRY P. ELLIOTT, M.D.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(April 18, 1985)

Before GODBOLD, Chief Judge, KRAVITCH and HATCHETT, Circuit Judges.

PER CURIAM: AFFIRMED. See Circuit Rule 25.

"Costs taxed against plaintiff-appellant."

Judgment Entered: April 18, 1985
For the Court: Spencer D. Mercer, Clerk
By: /S/
Deputy Clerk

ISSUED AS MANDATE May 31, 1985

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH DISTRICT

No. 84-3618

MAHFOUZ EL SHAHAWY, M.D.,

Plaintiff-Appellant,

versus

LARRY P. ELLIOTT, M.D.,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

---

ON PETITION FOR REHEARING

(May 21, 1985)

Before GODBOLD, Chief Judge, KRAVITCH and HATCHETT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/S/

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MAHFOUZ EL SHAHAWY, M.D.,
Plaintiff,

vs. Case No. 81-545-Civ-T-WC

LARRY P. ELLIOTT, M.D.,
Defendant.

ORDER

The Court has for consideration Plaintiff's Motion to Strike Bill of Costs and Defendant's Response. The Court has reviewed the costs as taxed by the Clerk on June 11, 1984 and finds them appropriate. Therefore, it is

ORDERED:

1. Plaintiff's Motion to Strike Bill of Costs is denied.

DONE AND ORDERED AT Tampa, Florida this 12th day of June, 1984.

/S/
WILLIAM J. CASTAGNA
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

RECEIVED JUN 14, 1984

BILL OF COSTS

United States District Court DISTRICT
Middle District of Florida, Tampa Div.

MAHFOUZ EL SHAHAWY, M.D. DOCKET NO.
81-545-Civ-T-WC

v. MAGISTRATE CASE NO.

LARRY P. ELLIOTT, M.D.

Judgment having been entered in the above entitled action on December 22, 1982 against Mahfouz El Shahawy, M.D., Plaintiff (affd. per curiam 3/20/84) the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk		$8.00
Fees for service of summons and complaint	~~1004.87~~	168.12
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in this case _____		672.00
Fees and disbursements for printing .		300.51
Fees for witnesses (itemized on reverse side)	~~7015.60~~	1,286.01
Fees for exemplification and copies of papers necessarily obtained for use in case	~~1443.45~~	1,045.89
Docket fees under 28 U.S.C. §1923 .		-0-
Costs incident to taking of depositions	~~2852.32~~	2,582.32
Costs as shown on Mandate of Court of Appeals.		
Other costs (Please itemize)		
	Total~~$13296.75~~	6,062.85

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories. Briefs should also be submitted supporting the necessity of the requested costs and citing cases supporting taxation of those costs.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed with postage full prepaid thereon to; Michael C. Addison, Esq., 100 Twiggs St., Tampa FL 33601 and Bailey & Dawes, 2 S. Biscayne Blvd., Miami FL 33131

SIGNATURE OF ATTORNEY /S/
Frank E. Strelec

FOR: Larry P. Elliott, M.D. Date 5/4/85
Name of claiming party

Please take notice that I will appear before the clerk who will tax costs on the following day and time.	DATE AND TIME
Costs are hereby taxed in the following amount and included in the judgment:	AMOUNT TAXED $6,062.85

CLERK OF COURT (BY) DEPUTY CLERK		DATE
DONALD M. CINNAMOND	/S/	6/11/84

M'FILM ROLL #83
DOCUMENT #1213

ITEMIZATION FOR REQUESTED COSTS

1. *Fees of the clerk:*		
06/28/82 Certified copies	$ 6.00	
11/12/82 " "	2.00	
SUB-TOTAL		$ 8.00
2. *Fees for service of subpoenas and complaint:*		
02/11/82 El Shahawy (2) and Tyrity	$ 21.00	
09/13/82 Don Taylor & Associates	10.00	
11/06/82 French	7.00	
11/06/82 Tollerton	7.00	
11/06/82 Floyd	7.00	
11/06/82 Chapman	7.00	
11/06/82 Rand	7.00	
11/06/82 Hereford	7.00	
11/08/82 Baylis	7.00	
11/11/82 Locke, Reynolds, Boyd & Weisell	~~917.87~~ 81.12	
11/12/82 Greenwald	7.00	
SUB-TOTAL		~~$1004.87~~ 168.12
3. *Fees of the court reporter, etc.:*		
04/06/83 Transcript of Trial	$ 672.00	
SUB-TOTAL		$ 672.00
4. *Fees for printing:*		
11/03/82 Postal Instant Press	$ 300.51	
SUB-TOTAL		$ 300.51
5. *Fees for trial witnesses:*		
11/29-11/30/82 Dr. Chinoy - time & travel	~~$4625.00~~ 230.00	

	" "	
	- lodging	104.86
	" r. Chi	
	- lodging	80.35
11/14-11/19/82	Dr. Elliott	
	- travel	~~299.00~~
	" "	
	- travel, lodging	~~671.07~~
11/29-12/1/82	C. Cooper	
	- time & travel	~~327.00~~ 75.11
	" "	
	- lodging	132.29
11/30-12/1/82	G. Cooper	
	- travel	~~25.00~~
	" "	
	- lodging	151.57
11/30/82	J. Frierson	
	time & travel	~~181.73~~ 91.50
	" "	
	- travel	~~25.00~~ 22.76
12/01/82	T. French - lodging	63.13
	" "	
	- travel	~~25.00~~ 22.76
11/30-12/1/82	Dr. Kelley	
	- lodging	~~25.00~~ 22.76
	M. Baylis	
	- travel	~~25.00~~ 22.76
	W. Hereford	
	- travel	~~25.00~~ 22.76
	I Rand	
	- travel	~~25.00~~ 22.76
	W. Chapman	
	- travel	~~25.00~~ 22.76

J. Toilerton		
- travel	~~25.00~~ 22.76	
C. Williams		
- travel	~~25.00~~ 22.76	
H. Floyd		
- travel	~~25.00~~ 22.76	
SUB-TOTAL		~~$7015.60~~ 1286.01

6. *Copies of papers used for case:*

07/21/82	Documents at depositions	$ 96.75	
08/24/82	Articles from Sarasota newspaper	3.00	
09/09/82	Medical records from Shands	~~1272.10~~ 874.54	
09/10/82	Documents	71.60	
	SUB-TOTAL		~~$1443.45~~ 1045.89

7. *Docket fees:*
None.

8. *Costs incident to taking depositions:*

A.	*Witness fees:*	
	Dr. Chinoy	~~$ 300.00~~ 30.00
	Hantil Conners	30.00
	Dr. Robert Robinson	30.00
	Dr. William Nasser	30.00
	Steve Schumacher	30.00
	Katherine Waddy	30.00
	Richard Treloar	30.00
	Kathy Tyrity	30.00
	M. El Shahawy - 2/22/82	30.00
	" " 2/23/82	30.00

	SUB-TOTAL		~~$ 570.00~~ 300.00
B.	*Court reporters' fees:*		
	12/01/81 E.R. Harvey - (Dr. Cooper)	$ 148.68	
	01/11/82 " " -(Singleton,) (Green & Taylor)	128.75	
	01/24/82 D. L. Hoppe	165.30	
	02/16/82 Milton Rep. -(Dr. Elliott)	194.66	
	02/22/82 Vos & Vos -(Dr. El Shahawy) " "	312.95	
	02/23/82 " " " "	307.45	
	02/26/82 -(Kathy Tyrity)	202.95	
	07/21/82 Stewart Rep. -(Conner, Robert-) (son, Waddy and) (Schumacher)	481.60	
	08/20/82 E. W. Elliott -(C. Cooper)	185.56	
	09/02/82 J. O'Conner -(Dr. Frank)	40.00	
	09/03/82 Coffee et al -(J. Frierson)	58.82	
	09/03/82 C. Jennings -(Dr. Chinoy)	55.60	
	SUB-TOTAL		$2282.32
	TOTAL		~~$13296.75~~ 6062.85

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-3154

D.C. Docket No. 81-00545

MAHFOUZ EL SHAHAWY, M.D.,

Plaintiff-Appellant,

versus

LARRY P. ELLIOTT, M.D.,

Defendant-Appellee.

Appeal from the United States District Court
For the Middle District of Florida

(March 20, 1984)

Before FAY, VANCE and HATCHETT, Circuit Judges.

PER CURIAM:

AFFIRMED. See Circuit Rule 25.

"Costs taxed against plaintiff-appellant."

Judgment Entered: _____

For the Court: Spencer D. Mercer, Clerk

By: /S/

Deputy Clerk

ISSUED AS MANDATE: MAY 21, 1984

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MAHFOUZ EL SHAHAWY, M.D.,
Plaintiff,

vs. Case No. 81-545-Civ-T-WC

LARRY P. ELLIOTT, M.D.,
Defendant.

OPINION

This cause came before the Court on a non-jury trial on November 17-18, 29-30, and December 1-2, 1982. Plaintiff Mahfouz El Shahawy, M.D. filed this action against Defendant Larry P. Elliott, M.D., alleging that Defendant willfully and maliciously slandered and libeled Plaintiff, intentionally interfered with Plaintiff's business relaitonship, and negligently defamed Plaintiff. Plaintiff's cause of action arose out of facts surrounding Sarasota Memorial Hospital's denial to him of cardiac catheterization privileges in October of 1980. Plaintiff specifically alleged that Defendant's statements in a letter of February 13, 1980 to Dr. William Page, chairman of the hospital's cardiac cath lab standards committee, and Defendant's testimony before the Sarasota County Public Hospital Board on October 21, 1980 imputed characteristics to Plaintiff that were incompatible with the proper exercise of his profession and therefore constituted libel and slander per se.

M'FILM ROLL #83
DOCUMENT #5816

Additionally, Plaintiff contended that Defendant's written and oral statements proximately caused representatives of Sarasota Memorial Hospital to recommend that Plaintiff be denied cardiac catheterization privileges, and damaged Plaintiff's reputation in the community and among his professional

colleagues.

Plaintiff asserted that Defendant made the following statements either knowing of their falsity or without investigation as to their truth and with the malicious intent to injure the Plaintiff: that Plaintiff's technical abilities and judgment in performing cardiac catheterizations were substandard; that Plaintiff had not performed catheterizations in the six years between his resignation from the catheterization lab at Shands Teaching Hospital in Gainesville, Florida and the date of Defendant's letter to Dr (sic) Page; that Plaintiff's expertise and past performance indicated that he would not meet the current standards for physicians performing cardiac catheterizations; that Plaintiff's catheterization techniques at Shands Teaching Hospital of the University of Florida fell below accepted standards and quality for an invasive cardiologist; that Plaintiff, as a faculty member supervising physicians who were fellows in the cardiac cath lab, did not perform any catheterizations until one of the fellows went on vacation; that Plaintiff's cut-down on a patient's arm preparatory to inserting the catheter was messy and caused a wound to the patient; that Plaintiff's catheterization procedures were drawn out; that Defendant took steps to have Plaintiff suspended from the catheterization laboratory; and that Plaintiff did not properly perform his supervisory duties.

The Court has reviewed the testimony and exhibits presented at trial and makes the following findings:

(1) Plaintiff Mahfouz E. Shahawy, M.D. joined the faculty of the University of Florida as an assistant professor of medicine in the division of cardiology in July, 1973. His duties included directorship of the adult cardiology division of the cardiac catheterization laboratory. In the cardiac catheterization procedure catheters are introduced into arteries and veins under the skin near the elbow or groin. The physician advances the catheter through the blood vessels into the interior of the heart, and gathers information by taking

x-ray pictures of the vessels or heart chambers into which contrast dye has been placed through the catheter.

As a faculty member, Dr. Shahawy supervised physicians who were fellows in training. Generally, both a fellow and a faculty member, who was designated the attending physician, were assigned to each case. Dr. Shahawy testified that he did few entire catheterizations by himself; rather, the fellow would do various parts of the procedure and Dr. Shahawy would be available to step in if complications arose. Dr. Shahawy performed these duties until his resignation from the cardiac catheterization lab on January 25, 1974. He remained at the University of Florida Medical School as an assistant professor and director of the heart station until late December, 1985, when he moved to Sarasota, Florida.

From July, 1973 to January, 1974 when Dr. Shahawy was associated with the cardiac cath lab, Defendant Larry Elliott, M.D. was a professor of radiology and director of the division of Cardiac Radiology at the University of Florida. During the fall of 1973 Dr. Elliott was made acting medical director of the cardiac catheterization laboratory.

(2) In July, 1978 Dr. Shahawy applied for privileges to perform cardiac catheterization in the recently opened laboratory at Sarasota Memorial Hospital. His application was denied. In December, 1979, after the Sarasota County Public Hospital Board approved the formation of a Cardiac Cath Lab Standards Committee, Dr. Shahawy renewed his application for privileges. The Cardiac Cath Lab Standards Committee reviewed Dr. Shahawy's application and recommended that it be denied. From there Dr. Shahawy's application when through various hospital committees, returning eventually to the Cath Lab Standards Committee. On February 12, 1980, Dr. F. E. Rushton, Chief of Staff of Sarasota Memorial Hospital, telephoned Dr. Larry Elliott concerning Dr. Shahawy's application. As Chief of Staff, Dr. Rushton was an ex officio member of all hospital committees, and he contacted Dr. Elliott at the request of Dr. William L.

Page, chairman of the Cardiac Cath Lab Standards Committee. On February 13, 1980, in response to Dr. Rushton's request, Dr. Elliott wrote the allegedly libelous letter to Dr. Page. No evidence presented at trial suggested that Dr. Rushton's inquiry of Dr. Elliott was improper or was conducted outside the scope of a legitimate investigation of the credentials and qualifications of an applicant for cath lab privileges, nor did anything suggest that Dr. Elliott would have written the letter absent Dr. Rushton's formal request.

Although Plaintiff outlined in detail the stages at which Dr. Shahawy's application was considered by various hospital committees, that testimony is only marginally relevant to the defamation and privilege issues involved in this case. The Court finds that the hospital's review of Dr. Shahawy's application was appropriate. His application was acted upon with deliberateness and with due regard to ascertaining the reasons behind conflicting reports concerning Dr. Shahawy's qualifications to do cardiac catheterizations. Thus, when the matter came before the Sarasota County Public Hospital Board for its consideration in October, 1980, Dr. Elliott's attendance there was not extraordinary; rather, he testified at Dr. Rushton's request as part of an ongoing and properly conducted review of Dr. Shahawy's fitness to perform cardiac catheterizations in the Sarasota Memorial Hospital Cardiac Catheterization Laboratory.

(3) Defendant presented much evidence concerning the reasons for Dr. Elliott's adverse opinion of Dr. Shahawy's ability to perform cardiac catheterizations. Dr. Elliott did not closely observe Dr. Shahawy's performance in the cardiac cath lab at Shands Teaching Hospital until January of 1974. Dr. Gary Cooper, the second year fellow in the cardiac catheterization laboratory, went on vacation for two weeks beginning January 14, 1974. At the same time, Dr. David Chinoy, a first year fellow in cardiology, had just begun his training in the cath lab. Under these circumstances, Dr. Sha-

hawy was obliged to actually perform much of the catheterization procedure himself rather than merely supervising the fellow's work.

It was during this period while Dr. Cooper was on vacation that Dr. Elliott received complaints about Dr. Shahawy's work in the cath lab. These complaints prompted him to observe Dr. Shahawy perform several catheterizations on January 15 and 16, 1974. Dr. Elliott, from his observations of Dr. Shahawy, concluded that Dr. Shahawy was deficient in three areas: in his command of technical skills required for catheterizations, in creating the proper environment for the patient's psychological well being, and as a role model for the student physicians and technicians. He reached these conclusions from observing, among other things, that Dr. Shahawy neglected to clear air from the catheter prior to insertion and that a technician had to remind him to do so, that he mishandled a guide wire by jerking it from the patient while it was still in the needle, that he failed to check out the equipment before doing the procedure, that he did not listen or react quickly when the technician would warn him that the patient's heart was undergoing premature ventricular contractions, and that he created a messy environment by ejecting fluid and blood from syringes onto the floor instead of into the wash basins provided. Furthermore, Dr. Elliott felt that Dr. Shahawy's shouting and disregard for proper medical etiquette created a chaotic atmosphere in the cath lab, which could have harmful psychological effects on patients who, without anesthesia, were undergoing a somewhat anxiety-producing experience. Finally, Dr. Elliott felt that Dr. Shahawy's conduct was substandard and inappropriate as a role model for other physicians and technicians. For these reasons, Dr. Elliott notified Dr. Singleton, the acting Chief of Staff, of what he felt were the deficiencies in Dr. Shahawy's peroformance. Dr. Shahawy submitted his resignation from the cath lab on January 25, 1974.

(4) Dr. Shahawy flatly denied the occurrence of certain incidents that caused Dr. Elliott to conclude that Dr. Shahawy's conduct was substandard. However, most of these incidents were corroborated by at least one credible witness. For instance, Dr. David Chinoy, a highly credible witness, testified that although Dr. Shahawy squirted him in the eyes with heparinized solution perhaps inadvertently, he expressed no concern at Dr. Chinoy's distress or the fact that Dr. Chinoy had to seek treatment from an opthalmologist. Ms. Janet Frierson, a cardiovascular technologist who supervised the Shands cath lab during Dr. Shahawy's tenure, testified that she had to remind Dr. Shahawy to clear the air bubble from the pressure injector before injecting the contrast dye. Mr. Charles Cooper, a bioelectronic engineer at the Shands cath lab, testified that he was present when Dr. Chinoy was squirted in the eyes with the heparinized solution and that Dr. Shahawy was oblivious to the ensuing confusion. Mr. Cooper also observed Dr. Shahawy whipping the guide wire out of the patient and was concerned with Dr. Shahawy's failure to take not of changes in electrocardiograms. Dr. Michael Kelley testified that Dr. Shahawy's demeanor was not what it should be and that Dr. Shahawy was not competent to perform cardiac catheterizations in 1974 or in 1980. Dr. Gary Cooper testified that Dr. Shahawy would reattach catheters without purging air bubbles, that he jerked guide wires from patients, and that he was not competent to do catheterizations in 1974 or 1980.

Dr. Shahawy presented witnesses who testified that he was competent in catheterizations in 1974 and that he was an adequate supervisor. These witnesses included Dr. Rupert Charles Curry, a second year fellow in 1973 and 1974, and Dr. William Jape Taylor, Distinguished Service Professor of Medicine at the University of Florida who had recruited Dr. Shahawy to come to Shands in 1973. Dr. Taylor, after hearing complaints about Dr. Shahawy form Dr. Elliott and at least

one other person who worked in the lab, Dr. Gary Cooper, responded by reviewing the patients more carefully and found that technically the catheterizations were proceeding smoothly, without complications. Dr. Curry testified that Dr. Shahawy was well qualified to do cardiac catheterizations and that he had been a good supervisor while he was training. However, Dr. Taylor did not testify as to any personal observations of the Plaintiff in the performance of catheterizations.

Much testimony was devoted to Dr. Elliott's statement that Dr. Shahawy's procedures were unduly drawn out and thereby subjected patients to unnecessarily prolonged radiation. Drs. Kelley, Cooper, Curry, and Taylor were all asked what the "standard" fluoroscopy time (or exposure to radiation) should be. No clear standard emerged from this testimony. Dr. Taylor emphasized that fluorotimes would be longer in a teaching institution where the fellows were learning to perform the procedures, but this did not account for what were urged to be lengthly fluorotimes when Plaintiff did the procedures himself. Also important was the patient's condition, which would affect the amount of time it took to accomplish the catheterization.

Dr. Elliott had stated that Dr. Shahawy had done no catheterizations since Dr. Shahawy had left Shands. Dr. Shahawy has, however, performed many right heart catheterizations since that time. One can reasonably assume however, that Dr. Elliott referred to left heart catheterizations, which must be done in a cath lab. Dr. Shahawy had no opportunity during that six year period to perform left heart catheterizations except for two days in March, 1980, when he went to Indianapolis for some refresher training.

Finally, Dr. Elliott had stated that Dr. Shahawy had done no catheterizations at Shands until his student, Dr. Gary Cooper, went on vacation. Dr. Shahawy did not deny this and testified repeatedly that his role was to supervise and to step in only when the fellow needed assistance.

In fact, there was introduced into evidence only one record of a catheterization that Dr. Shahawy performed without a fellow.

The Court has outlined this testimony in some detail to demonstrate the divergent opinions of Dr. Shahawy's ability to perform competently in the cardiac catheterization laboratory. The credible evidence corroborating Dr. Elliott's statements serves in particular to show that some substantial basis existed for Dr. Elliott's performing the opinions he expressed concerning Dr. Shahawy and that he was not motivated to make the allegedly defamatory statements solely from ill will or injurious intent.

(5) Plaintiff attempted to prove that much ill will existed between Dr. Elliott and Dr. Shahawy and that Dr. Elliott's injurious comments were made maliciously and with the intent to injure Dr. Shahawy. Dr. Elliott testified that he felt it his moral and ethical obligation to insure that Dr. Shahawy would not obtain privileges to do catheterizations he was not competent to perform. Dr. Elliott asserted that all of the statements he made were accurate and true expressions of his opinion of the Plaintiff's competence based on complaints and his own observations of Plaintiff's performance. The Court finds that Plaintiff did not prove, even inferentially, that Dr. Elliott was motivated by ill will or malice in writing the February 13, 1980 letter to Dr. Page or in testifying at the meeting of the Sarasota County Public Hospital Board in October, 1980, nor did Dr. Elliott make any statements concerning Dr. Shahawy with deliberate disregard for the truth as Plaintiff claimed.

Based on the foregoing findings of fact the Court makes the following conclusions of law:

The Court has jurisdiction of this cause pursuant to 28 U.S.C. § 1332.

Defendant Elliott's remarks in his letter to Dr. Page and in his testimony before the Sarasota County Public Hospital Board were qualifiedly privileged. A communication made in good faith on any subject matter by one having an interest

therein or in reference to which he has a duty is privileged if made to a person having a corresponding interest or duty even though it contains matters which would otherwise be actionable and though the duty is not a legal one but only a moral or social obligation. *Belcher v. Schilling*, 349 So.2d 185, 186 (Fla. 3rd DCA 1977). If the qualified privilege is founded on business matters, the statements that would otherwise be libel or slander must be made regarding the business, only to others having an interest in the business. *Axlerod v. Califano*, 357 So.2d 1048, 1051 (Fla. 1st DCA 1977). Essential elements of a conditionally privileged publication are: "(1) Good faith; (2) an interest to be upheld; (3) a statement limited in its scope to this purpose; (4) a proper occasion; and (5) publication in a proper manner." 357 So.2d at 1051. Dr. Elliott's publications clearly contained these essential elements.

The Court finds that Defendant Elliott, who had genuine reasons to doubt Dr. Shahawy's competence, made the allegedly defamatory statements in good faith; that as a physician knowledgeable in the cardiac catheterization field, Dr. Elliott had an interest in insuring that high standards were maintained in cardiac catheterization laboratories; that Dr. Elliott's remarks solely concerned cardiac catheterization standards and his professional opinion of Dr. Shahawy's competence; that Dr. Elliott's remarks were made in response to properly conducted investigations of Dr. Shahawy's application and that Dr. Elliott had no reason to believe that they would be used for any other purpose; and that writing the statements in the letter to Dr. Page and testifying before the Sarasota Public Hospital Board were proper means of communicating his opinions about Dr. Shahawy.

Because Dr. Elliott's remarks were protected by a qualified privilege, Plaintiff was required to prove that Dr. Elliott abused that privilege by acting with actual malice. When a qualified privilege exists, malice cannot be presumed as it might otherwise be in case such as this where the remarks are

claimed to have injured Plaintiff in the conduct of his profession. 357 So.2d at 1050. The Court finds that Defendant did not act with actual malice in publishing his comments about Dr. Shahawy. The Plaintiff failed to prove, even by inference, that Dr. Elliott made any false statements about Dr. Shahawy knowing of their falsity, or with reckless disregard for the truth, or with ill will or intent to injure the Plaintiff. For these reasons, Plaintiff's claims of libel, slander, and negligent defamation must fail.

Finally, Plaintiff failed completely to prove his claim of intentional interference with business relationship. Plaintiff claimed that Dr. Elliott's remarks deprived Plaintiff of his right to gain cardiac catheterization privileges and thus restricted his employment or livelihood. Plaintiff did not demonstrate that he had a legal right to an advantageous business relationship with which Defendant interfered, for nothing suggested that Plaintiff had any right to perform cardiac catheterization at Sarasota Memorial Hospital. Furthermore, no evidence of damages was presented.

Judgment will be entered in accordance with this Opinion.

DATED at Tampa, Florida this 22nd day of December, 1982.

WILLIAM J. CASTAGNA
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MAHFOUZ EL SHAHAWY, M.D.,
Plaintiff,
vs. Case No. 81-545-Civ-T-WC
LARRY P. ELLIOTT, M.D.,
Defendant.

FINAL JUDGMENT

In accordance with the Opinion filed this date, it is ADJUDGED:

As to the claims of Plaintiff Mahfouz El Shahawy, M.D. against Defendant Larry P. Elliott, M.D., Judgment is entered in favor of Defendant Larry P. Elliott, M.D. and Plaintiff Mahfouz El Shahawy, M.D. shall take nothing by this action.

DONE AND ORDERED at Tampa, Florida this 22nd day of December, 1982.

/S/
WILLIAM J. CASTAGNA
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record